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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-03-NY-060
Fransisco Peralta	)	
WNPY529	)	NAL/Acct. No. 200332380022
East Elmhurst, NY	)	
	)	FRN: 0008 9137 41

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: June 13, 2003**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Fransisco Peralta apparently violated Section 90.403(a)(2) of the Commission's Rules (the "Rules"),<sup>1</sup> by operating mobile units on an unauthorized frequency of 151.635 MHz. We conclude that Fransisco Peralta is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On May 1, 2003, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 151.805 MHz and 151.635 MHz in East Elmhurst, NY, to follow-up an investigation concerning the operation on unauthorized frequencies in the Private Land Mobile Radio Services. The agents determined that Continental Car Service, located at 98-02 Astoria Boulevard, East Elmhurst, NY 11369, operated mobile units on a frequency of 151.635 MHz. The agents advised the dispatcher on duty that the mobile units were operating on an unauthorized frequency of 151.635 MHz. There was no evidence of a Commission authorization for Continental Car Service to operate mobile units on 151.635 MHz in East Elmhurst, NY.

3. On May 2, 2003, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 151.805 MHz and 151.635 MHz in East Elmhurst, NY, and again determined that Continental Car Service operated mobile units on a frequency of 151.635 MHz. They also inspected a second base station

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<sup>1</sup> 47 C.F.R. § 90.403(a)(2).

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that was operational on the unauthorized frequency of 31.320 MHz. A subsequent search of Commission records showed that a license, WPPK459, for the frequency of 33.160 MHz, had expired on 3/20/2002. The agents advised Andres Graceno, one of the owners of Continental Car Service, that the mobile units were operating on an unauthorized frequency of 151.635 MHz.

### III. DISCUSSION

4. Section 90.403(a)(2) of the Rules requires that licensees in the private land mobile radio services shall be directly responsible for the proper operation and use of each transmitter for which they are licensed. In this connection, licensees shall exercise such direction and control as to assure that the transmitter is being operated in a permissible manner. A review of Commission's records showed that Fransisco Peralta was granted authority under his license, WNPY529, to operate one base station and 25 mobile units on a frequency of 151.805 MHz. Agents observed mobile units operating on 151.635 MHz.

5. Based on the evidence before us, we find that Fransisco Peralta operated mobile units on an unauthorized frequency of 151.635 MHz on May 1, 2003 and May 2, 2003, in willful<sup>2</sup> and repeated<sup>3</sup> violation of Section 90.403(a)(2) of the Rules.

6. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),<sup>4</sup> sets the base forfeiture amount for using an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,<sup>5</sup> ("Act") which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. In this case, Fransisco Peralta has a history of non-compliance, as evidenced by the expired license for the transmitter that was operational on the unauthorized frequency of 31.320 MHz. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup>Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup>47 C.F.R. § 1.80.

<sup>5</sup>47 U.S.C. § 503(b)(2)(D).

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7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules<sup>7</sup>, Fransisco Peralta is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully violating Section 90.403(a)(2) of the Commission's Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Fransisco Peralta SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380022 and FRN: 0008 9137 41.

10. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380022.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>6</sup>47 U.S.C. § 503(b).

<sup>7</sup>47 C.F.R. §§ 0.111, and 0.311.

<sup>8</sup> See 47 C.F.R. § 1.1914.

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14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Fransisco Peralta, 98-02 Astoria Boulevard, East Elmhurst, NY 11369.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office

Attachment A – Condensed List of Small Entities, October 2002